

DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

JUN 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n) and 332 of)
the Communications Act)
)
Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ As directed by the Omnibus Budget Reconciliation Act of 1993, the Further Notice proposes modifications to existing mobile services rules to establish regulatory symmetry between the technical, operational and licensing rules for Part 22 and Part 90 commercial mobile radio service ("CMRS") providers. With the purpose of further ensuring competition within the CMRS marketplace, the Further Notice also proposes the adoption of a cap on the amount of CMRS spectrum that any entity may acquire in a given geographic area.

Century generally supports the Further Notice's efforts to foster competition through symmetrical regulation of substantially similar services. However, for the reasons detailed below, it strongly opposes the proposed cap on the aggregation of CMRS spectrum.

¹ Implementation of Sections 3(n) and 332 of the Communications Act, FCC 94-100 (released May 20, 1994) [hereinafter Further Notice].

No. of Copies rec'd
List ABCDE

014

I. THE PROPOSED CAP ON CMRS SPECTRUM WOULD NOT SERVE THE PUBLIC INTEREST

In response to concerns that an increasingly flexible CMRS regulatory regime might permit one or more licensees to acquire large amounts of spectrum -- and thus excessive market power -- in a particular geographic area, the Further Notice suggests a cap on the amount of CMRS spectrum that any one entity can accumulate. Specifically, the Commission proposes limiting an entity's permissible CMRS holdings to slightly more than 40 MHz of spectrum in a given area.² The Commission also tentatively concludes that all CMRS ownership interests of five percent or more should be cognizable for this purpose. For numerous reasons, however, such a cap would clearly not serve the public interest.

As an initial matter, adoption of a broad spectrum cap is neither necessary nor appropriate. The competitive concerns raised in the Further Notice are purely speculative. No factual basis for imposing restraints on CMRS spectrum aggregation at this time has been identified. Indeed, particularly given the large amount of CMRS spectrum available and the existence of construction and operation requirements in many CMRS services, it would be difficult for any entity to hoard spectrum to the disadvantage of competitors and the public.

² According to the Commission, this amount should permit the offering of both broadband and narrowband services.

Even if a limit on aggregated spectrum were demonstrated to be necessary, a broad cap on all CMRS spectrum would not be the appropriate mechanism. Rather, the Commission should utilize spectrum caps that are specific to a particular service, as it has in the PCS context. During the rulemaking to define a new CMRS offering, the Commission could consider the need for such limitations with respect to that service. This service-specific approach can better address any potential competitive problems that might exist. By analyzing each situation as it arises, the Commission will be able to make an informed decision as to the nature and extent of any restrictions required.³ In contrast, the broad spectrum cap proposed simply cannot account for the exigencies of particular situations or for future technical or competitive developments.

The proposed spectrum cap would also unfairly restrict the ability of current CMRS licensees to participate in new CMRS services, with serious adverse effects on the public. Today's CMRS licensees are the companies that possess the greatest technical expertise and experience in addressing the public's wireless needs. By unduly restricting or precluding their participation in new CMRS services, the proposed

³ As was admitted in the Further Notice, the adoption of a spectrum cap that appropriately addresses competitive concerns requires the consideration and resolution of a number of complex issues. Among these are: What CMRS spectrum should be subject to the cap? What should be the size of the geographic area in which the cap applies? How should attributable interests be calculated? How should the cap be applied to designated entities? The answers to these questions are likely to differ from service to service. Accordingly, any questions on spectrum aggregation are better addressed on a service-by-service basis.

spectrum cap could serve to delay the introduction of such services and prevent the development of desirable technological advancements.

II. CONCLUSION

For the foregoing reasons, Century urges the Commission to abandon its proposal for a cap on CMRS spectrum aggregation.

Respectfully submitted,

CENTURY CELLUNET, INC.

By: W. Bruce Hanks (WJH)
W. Bruce Hanks
President
CENTURY CELLUNET, INC.
100 Century Park Avenue
Monroe, LA 71203
(318) 325-3600

June 20, 1994